U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: California Service Center Date: AUG 23 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a software developer which seeks to employ the beneficiary as its director of engineering. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not contest the beneficiary's eligibility for classification as a member of the professions holding an advanced degree. The sole issue in this matter is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

[redacted]

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

[redacted] the petitioner's manager of Human Resources, states:

> [The petitioner] has provided products and consulting services for a wide range of **safety-critical and mission-critical projects.** [The petitioner] is involved in many programs including Space, defense and nuclear projects. . . .
>
> [The beneficiary] has been involved in development and deployment of mission-critical systems for over twenty years. His most recent experiences include participation in numerous projects at the Canadian Space Agency (CSA). He led the NASA/CSA effort to implement the ground-control robotic devices on the International Space Station. In that role, he also served as the scientific authority for other robotic projects. These included such projects as Trajectory Planning and Object

Avoidance, MSS Autonomous Robotics (Tele Robotics) Systems, and the Space Vision System used on the Space Shuttle for docking with the Russian Mir Station, the Telefunction Project and Robotics Evaluation and Characterization (REACH), a joint NASA/CSA project.

[The beneficiary] also served as manager of Canadian Ground Support Operations - International Space Station program, where he defined requirements for and managed the implementation of the engineering Support Center, the Operations and Training Simulation System, the Software Development Support environment, and the Space Station program network.

At the present time, [the beneficiary] directs all phases of development and support for the [petitioner's] line of native, real-time and safety-critical projects. . . .

[The beneficiary] is undoubtedly one of the world's leaders in robotics and safety-critical and mission-critical software development. He directs a staff of 26 Ada Language Engineers producing and enhancing Ada language software tools. These tools are safety and mission critical components used to create programs and applications for many Department of Defense and other Federal programs, including the U.S. Space Station. In the commercial world, these have application[s] in the Boeing 777 flight control system.

A list of the petitioner's current projects includes subway network control systems, air traffic control systems, nuclear power plant control systems, and space applications.

In addition to documentation pertaining to the beneficiary's field, the petitioner submits several letters. Several of the beneficiary's former collaborators from the International Space Station project assert that the beneficiary has earned international recognition for his work in robotics. [redacted] NASA's Canadian Liaison for the International Space Station Program, notes that CSA robotic equipment will be responsible for integrating and assembling the various components of the station.

Beyond the beneficiary's collaborators, the petitioner submits a letter from [redacted] Ph.D., chair of the Department of [redacted] at [redacted] California. [redacted] states that he knows of the beneficiary's work through their shared "interest in Robotic Technology," and asserts that the beneficiary "is presently regarded as one of the world leaders in the field of Robotics," and "is world renowned for leading the Canadian Space Agency team in the design and development of the Robotic Manipulator which will be used in assembling the International Space Station."

The director denied the petition, stating that the petitioner has not shown how the beneficiary, as an individual, has had a particularly profound and beneficial effect on his field of endeavor. The director also stated that the petitioner has not shown how, specifically, the beneficiary will benefit the United States.

On appeal, counsel asserts that labor certification would be inappropriate in this matter because "[t]he Petitioner states that it would be impossible to quantify in an objective manner the minimum qualifications required for the position." Counsel stresses that the beneficiary's experience with CSA gave the beneficiary a rare and valuable level of expertise in mission-critical and safety-critical robotics, and asserts that factors such as the beneficiary's reputation cannot translate to objective minimum qualifications.

[redacted] president and CEO of the petitioning company, asserts that the beneficiary's experience, by its nature, demonstrates the beneficiary's superior qualifications for the position in question. [redacted] asserts that such qualifications are essential because the petitioner's systems are critical for the safety of systems around the world. [redacted] notes that the beneficiary's recent projects for civilian and military clients demonstrate the wide range of the beneficiary's talents, and he observes that the beneficiary "represents our corporation on the **Parent Body of the National Committee for Information Technology Standards**" ("NCITS"), an organization which, according to its senior director, develops national standards and participates in the formulation of international standards in information technology. The beneficiary's presence in NCITS' Parent Body lends significant national scope to his efforts.

Upon careful consideration of the evidence presented, this office concludes that the beneficiary has played a highly significant role in his field, and that his position with the petitioner affords him the opportunity to continue to have such a level of impact. Knowledge and appreciation of the beneficiary's work is not limited to his past and present employers, although even there the Service cannot ignore that the beneficiary had previously played a significant role in a major international project (the International Space Station). While the beneficiary no longer works directly with the international space program, the basic skills and expertise remain the same and are applicable in a number of commercial and military areas. The beneficiary is not merely a competent engineer employed by a large corporation, but rather he has demonstrated a track record of internationally-recognized accomplishment which indicates that it is in the national interest of the United States to ensure his continued employment here.

[redacted]

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of endeavor, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes the significance of this beneficiary's work rather than simply the general importance of the occupation. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.